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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 909 (KPF)

5 MICHAEL BARRETO,

6 Defendant.

Plea

7 -----x

8 New York, N.Y.
9 October 28, 2022
10:00 a.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: KEDAR S. BHATIA
Assistant United States Attorney

17 DAVID E. PATTON

18 Federal Defenders of New York, Inc.
Attorney for Defendant

19 BY: ARIEL C. WERNER
NEIL P. KELLY
20 Assistant Federal Defenders

21 Also Present: Rachelle Veasley
22
23
24
25

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(Case called; appearances noted)

THE COURT: Good morning to each of you.

And Mr. Barreto, good morning to you, sir.

Can I have an acknowledgment on the record that you're able to hear me?

THE DEFENDANT: Yes.

THE COURT: Thank you, sir.

Mr. Kelly, Ms. Werner, should I be directing my questions to one of you in particular?

MS. WERNER: You can direct your questions to me this morning, your Honor. Thank you.

THE COURT: Thank you very much.

Ms. Werner, I've received some materials in connection with today's proceeding. I want to make sure I have the correct materials. I have a waiver-of-indictment form that's been signed by several people. I have a second superseding information, which I understand to actually be an updated version of an earlier document I received this week. I have received a letter, dated October 25 of 2022, from the United States Attorney's Office to you and several colleagues of the Federal Defenders regarding Mr. Barreto. And then I also received a printout from the government that was identified for me as the elements of the offense.

Ms. Werner, have you received each of these documents today?

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1 MS. WERNER: Yes, I have, your Honor.

2 THE COURT: Have you reviewed each of these documents
3 with your client?

4 MS. WERNER: Yes, your Honor.

5 THE COURT: Thank you.

6 It is my understanding, and I'll speak to your client
7 in just a moment, that in today's proceeding, your client
8 wishes to waive indictment in order to allow the filing of this
9 second superseding information and then to plead guilty to the
10 charges in the second superseding information. Is that
11 correct?

12 MS. WERNER: It is, your Honor.

13 THE COURT: And are you ready to proceed today?

14 MS. WERNER: We are.

15 THE COURT: May I speak with Mr. Barreto.

16 MS. WERNER: Yes, your Honor.

17 THE COURT: Thank you.

18 Let's do this, please. Although I appreciate you both
19 standing, just for audibility reasons, I want to be sure I can
20 hear you and everybody else can hear you. So I'll ask you to
21 remain seated, both of you, and I'll ask you to make sure that
22 the microphones remain reasonably close to you both so that I
23 can hear you, because being in this courtroom there are often,
24 as I've found, sometimes problems.

25 Mr. Barreto, did you just hear me speak with your

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1 attorney, Ms. Werner, a moment ago?

2 THE DEFENDANT: Yes.

3 THE COURT: And what I understand, sir, is that having
4 previously been arraigned on charging instruments and having
5 previously pleaded not guilty, what you'd like to do today is
6 something different. You'd like to waive your right to be
7 indicted, which would allow me to file a set of different
8 charges against you, and it is your wish to enter a guilty plea
9 to those different charges today. Is that correct, sir?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Barreto, before I can accept a guilty
12 plea and before I can permit you to waive indictment, I need to
13 ask you a series of questions. So what I'd like to do is talk
14 to you now about the purposes that those questions serve. The
15 first thing that I need to know, sir, is that you're competent.
16 And when I use that term, what I mean is that you can see and
17 hear and understand what is happening in this courtroom and
18 that you can make decisions with your full ability to see,
19 hear, and understand.

20 If I find that you are competent, we'll talk about
21 certain rights that you have. These are rights with respect to
22 indictment and these are rights with respect to your ability to
23 plead guilty or to go to trial. I'll also ask you some
24 questions to confirm that you understand the penalties that are
25 associated with these offenses.

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1 The most important thing, Mr. Barreto, is that you
2 understand each of the questions that I am asking you. If at
3 any time something that I am saying is confusing to you, if at
4 any time you wish to take a break to speak with your attorneys,
5 just let me know.

6 Will you do that, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you ready to proceed now?

9 THE DEFENDANT: Yes.

10 THE COURT: Ms. Noriega, can I ask you, please, to
11 swear in Mr. Barreto.

12 THE DEPUTY CLERK: Yes, your Honor.

13 Mr. Barreto, can you please stand and raise your right
14 hand.

15 (Defendant sworn)

16 THE DEPUTY CLERK: Thank you. Please state your full
17 name for the record.

18 THE DEFENDANT: Michael Barreto.

19 THE DEPUTY CLERK: Thank you. You may be seated.

20 THE COURT: Ms. Werner, I thank you in advance for the
21 many times that you'll be adjusting that microphone today and
22 your own. I do thank you for that, because it's important that
23 I hear everyone.

24 Mr. Barreto, the significance of my placing you under
25 oath is that if you answer any of the questions that I'm about

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1 to ask you falsely, you could be prosecuted for a separate
2 offense that's commonly known as perjury.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes.

5 THE COURT: Mr. Barreto, how old are you, sir?

6 THE DEFENDANT: I'm 34.

7 THE COURT: How far did you go in school, Mr. Barreto?

8 THE DEFENDANT: Ninth grade.

9 THE COURT: Did you attend school in the New York area
10 or somewhere else?

11 THE DEFENDANT: No. New York.

12 THE COURT: New York.

13 Sir, have you ever been treated or hospitalized for
14 any form of mental illness?

15 THE DEFENDANT: Yes.

16 THE COURT: Was it treatment or hospitalization or
17 both, sir?

18 THE DEFENDANT: Both.

19 THE COURT: Let's talk about hospitalization first.
20 Were you hospitalized once or more than once?

21 THE DEFENDANT: In -- twice.

22 THE COURT: When was the most recent hospitalization;
23 what year, if you can remember?

24 THE DEFENDANT: Oh, wow.

25 THE COURT: Let's try this. Was it more than five

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1 years ago?

2 THE DEFENDANT: Yeah. Yes.

3 THE COURT: Was it more than ten years ago?

4 THE DEFENDANT: Yeah.

5 THE COURT: OK. More than ten years ago?

6 THE DEFENDANT: Yeah. Yes.

7 THE COURT: Let's leave it at that.

8 When you were hospitalized, did you receive certain
9 medications?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you continue to take those medications
12 today?

13 THE DEFENDANT: They kind of changed it, but yeah.

14 THE COURT: Yeah. Why don't I ask a better question.
15 As a result of any mental health issues that you may have, are
16 you currently taking medications?

17 THE DEFENDANT: Yes.

18 THE COURT: Could you please tell me, either by the
19 name of the medication or what it does -- antianxiety,
20 antidepressant -- what types of medications you're taking?

21 THE DEFENDANT: It's like anxieties and stress and the
22 name of it, I think, is called busbar.

23 THE COURT: Busbar.

24 THE DEFENDANT: Yeah.

25 THE COURT: Yes. OK. Is that something you take

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1 every day, sir?

2 THE DEFENDANT: Twice a day. Twice a day.

3 THE COURT: In addition to that, are you taking any
4 other medications, sir, for any other mental health issues?

5 THE DEFENDANT: I am, but I don't remember. I --

6 THE COURT: That's fine. Are they also antianxiety
7 medications or something else?

8 THE DEFENDANT: One of them is for panic attacks and I
9 think anxiety also.

10 THE COURT: And so each day you take these medications
11 to help you with mental health issues. Is that correct?

12 THE DEFENDANT: Yes. Yes.

13 THE COURT: And have you taken them this morning, sir?

14 THE DEFENDANT: No.

15 THE COURT: Did you take them yesterday?

16 THE DEFENDANT: Yes.

17 THE COURT: Is there anything about your taking those
18 medications that gives you any difficulty seeing, hearing, or
19 understanding me this morning?

20 THE DEFENDANT: No. No.

21 THE COURT: No?

22 THE DEFENDANT: No.

23 THE COURT: Other than the mental health medications
24 we've just been talking about, are you taking any other
25 medications for any other medical conditions, such as high

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1 blood pressure or cholesterol or something like that?

2 THE DEFENDANT: No. No.

3 THE COURT: While you've been detained, have you been
4 able to see anyone, a psychologist or a therapist, to talk
5 about mental health issues?

6 THE DEFENDANT: I -- I have been trying, but they take
7 long.

8 THE COURT: Have you been speaking, perhaps, with a
9 social worker from the Federal Defenders?

10 THE DEFENDANT: Yes, yes. Definitely, yes.

11 THE COURT: Of course. I'm happy to have their
12 assistance.

13 Sir, are you receiving any other medical treatment, or
14 have you recently received any other medical treatment for any
15 other medical issue?

16 (Defendant conferred with counsel)

17 THE DEFENDANT: Oh, yeah. My finger.

18 THE COURT: You hurt your finger, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: And when, approximately, did that take
21 place?

22 THE DEFENDANT: Two weeks ago.

23 THE COURT: And was the care that you received
24 medicine for the pain, or did you receive stitches or did you
25 receive something else?

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1 THE DEFENDANT: Nothing.

2 THE COURT: Nothing?

3 THE DEFENDANT: They didn't give me nothing.

4 THE COURT: All right.

5 Ms. Werner, would you let me know by the end of this
6 proceeding whether there's a medical attention form you'd like
7 me to complete.

8 MS. WERNER: Yes, your Honor. Thank you.

9 THE COURT: OK. Yes. I don't know whether that's a
10 yes, you do need it or a yes, you'll tell me at the end.

11 MS. WERNER: Your Honor, I'd like to inquire further
12 with Mr. Barreto. We have been asking for him to get an x-ray,
13 and I'm not certain whether he actually has had that x-ray, but
14 we have inquired several times.

15 THE COURT: He has not had that x-ray. He's shaking
16 his head no.

17 (Defendant conferred with counsel)

18 MS. WERNER: Your Honor, a medical attention form
19 would be very helpful. I'm looking at his finger. It is still
20 crooked. He has one swollen knuckle, and it is something that
21 I have brought to the attention of MDC legal several times.

22 THE COURT: Yes, we will complete the medical
23 attention form. Could you please tell me what hand and what
24 finger.

25 MS. WERNER: It is the pointer finger of his left

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1 hand, your Honor.

2 THE COURT: Left hand. All right. Thank you very
3 much.

4 Mr. Barreto, despite any discomfort you may be having
5 with your finger, are you still able to proceed today? Are you
6 able to see and hear and understand me without difficulty?

7 THE DEFENDANT: No. I could continue.

8 THE COURT: And the "no" means there's no difficulty.
9 Thank you. No. I asked a question that could have called for
10 both answers.

11 In the last two days, have you taken any drugs,
12 medicine or pills of any type other than the ones that you
13 outlined for me about five minutes ago?

14 THE DEFENDANT: Ibuprofen.

15 THE COURT: Ibuprofen. OK. And was that for pain,
16 sir?

17 THE DEFENDANT: Actually, for pain and for headaches.

18 THE COURT: Yes, sir. And anything else other than
19 that?

20 THE DEFENDANT: No, no.

21 THE COURT: Does ibuprofen affect your ability to see,
22 hear or understand me this morning?

23 THE DEFENDANT: No, no, no.

24 THE COURT: Sir, have you consumed any alcoholic
25 beverages in the past two days?

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1 THE DEFENDANT: No.

2 THE COURT: I have to ask the question.

3 Is your mind clear this morning?

4 (Defendant conferred with counsel)

5 THE COURT: You can say that.

6 THE DEFENDANT: I'm just --

7 THE COURT: You're stressed?

8 THE DEFENDANT: Yeah. I'm just emotional. I'm just
9 all over the place.

10 THE COURT: OK. And we'll be talking about that, and
11 that's why you take the breaks to speak with your attorneys,
12 and that's why I'm asking you these questions.

13 Mr. Barreto, the question that I have for you is do
14 you want to proceed this morning?

15 THE DEFENDANT: Yes, yes.

16 THE COURT: OK. And is your mind clear enough to
17 permit you to proceed this morning?

18 THE DEFENDANT: Yes.

19 THE COURT: Ms. Werner, have you had a sufficient
20 opportunity, you and your colleagues, to discuss this matter
21 with Mr. Barreto?

22 MS. WERNER: We have, your Honor.

23 THE COURT: And do you believe he understands the
24 rights that he has and that he would be waiving by waiving
25 indictment or by pleading guilty?

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1 MS. WERNER: Yes, we do, your Honor.

2 THE COURT: Do you believe he's capable of
3 understanding the nature of these proceedings this morning?

4 MS. WERNER: We do.

5 THE COURT: If your client wishes to waive indictment
6 or if your client wishes to plead guilty, do you believe he is
7 competent to do so?

8 MS. WERNER: We do.

9 THE COURT: Mr. Bhatia, do you believe Mr. Barreto is
10 competent to waive indictment or to plead guilty if he wishes
11 to do either or both of those things?

12 MR. BHATIA: Yes, your Honor.

13 THE COURT: Thank you.

14 Mr. Barreto, based on our discussions this morning,
15 yours and mine, and that includes both your answers to my
16 questions and my observations of your demeanor here in court,
17 and based as well on the discussions I've just had with your
18 attorney and the attorney for the government, I find that you
19 are competent to proceed to waive indictment if you wish to do
20 so and to enter a plea of guilty if you wish to do so.

21 Mr. Barreto, in connection with this proceeding, I was
22 given a document, and it says in the upper right-hand corner
23 that it is a waiver of indictment. I'm marking this document
24 as Court Exhibit 1, and I'm holding a copy up right now as I'm
25 speaking to you. You have a copy of that document in front of

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1 you, sir, is that correct?

2 THE DEFENDANT: Yes. Yes.

3 THE COURT: I'm going to take down my copy.

4 Sir, the document that I have has three signatures on
5 it. Is that the same with the version of the document that you
6 have?

7 THE DEFENDANT: Yes.

8 THE COURT: Is one of those signatures yours?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you sign this document this morning,
11 sir?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you sign it in the presence of your
14 attorneys?

15 THE DEFENDANT: Yes.

16 THE COURT: Before you signed this document, did you
17 read it?

18 THE DEFENDANT: Yes.

19 THE COURT: Without giving me the specifics of your
20 communications -- I don't want the details -- did you discuss
21 it with your attorneys?

22 THE DEFENDANT: Yes.

23 THE COURT: At the time that you signed this document,
24 did you understand what this document -- what its purpose was?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand, sir, that you're under
2 no obligation to waive indictment in this case?

3 THE DEFENDANT: Yes.

4 THE COURT: Let me ask the question a little bit
5 differently. Sir, if you decided not to waive indictment and
6 the government wanted to bring additional charges or different
7 charges than those that they've already brought against you,
8 they would have to go to the grand jury.

9 Do you understand that, sir?

10 THE DEFENDANT: Yes.

11 THE COURT: And if they went to the grand jury, the
12 grand jury might decide to return an indictment on those new or
13 different charges, or they might decide not to.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: And so do you understand that by signing
17 this form and by waiving indictment, you're giving up your
18 right to have these additional, these different charges
19 presented to the grand jury?

20 Do you understand that, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: I've used the term "grand jury." When I
23 use that term, do you know what I'm talking about?

24 (Counsel conferred with defendant)

25 THE COURT: Mr. Barreto, let's do this. I'm going to

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1 pause for a moment. I'll ask you to turn to your attorney.
2 She'll talk to you about what the grand jury is and what
3 purposes it serves. I suspect some of these are things you've
4 talked about already and she's just refreshing your
5 recollection, and some of these, maybe, are just new to you.
6 But take the time you need, and I'd like you both to come back
7 to me when you're ready to continue.

8 Go ahead. Have that conversation. Thank you.

9 MS. WERNER: Thank you, your Honor.

10 THE COURT: Of course.

11 Mr. Barreto, have you had a sufficient time to speak
12 with your attorney about what the grand jury is and what
13 purposes it serves?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you have any questions for me about the
16 grand jury, sir?

17 THE DEFENDANT: No. No. No.

18 THE COURT: Is it your wish, sir, to waive indictment
19 in this case and to allow the filing of an information?

20 THE DEFENDANT: Yes.

21 THE COURT: Ms. Werner, have you had a sufficient
22 opportunity to speak with your client about his ability, his
23 right to waive indictment?

24 MS. WERNER: Yes, your Honor.

25 THE COURT: And as a result of that, do you believe --

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1 well, I'll ask the question from the negative perspective.

2 Is there any reason why I should not find that your
3 client has knowingly and voluntarily waived his right to be
4 indicted by the grand jury?

5 MS. WERNER: No, your Honor.

6 THE COURT: Mr. Bhatia, same questions. Any reason I
7 should not find that Mr. Barreto has knowingly and voluntarily
8 waived his right to be indicted by the grand jury?

9 MR. BHATIA: No, your Honor.

10 THE COURT: Mr. Barreto, having spoken with you and
11 having spoken to the attorneys in this case, I find that you
12 have knowingly and voluntarily waived your right to be indicted
13 by a grand jury. I'm allowing the filing of a document that
14 says in the upper right-hand corner second superseding
15 information.

16 Do you have a copy of that, sir.

17 THE DEFENDANT: Yes.

18 THE COURT: Have you read this document before, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Without giving me the details of your
21 communications, because I never want those, have you had an
22 opportunity to discuss it with your attorney, these charges?

23 THE DEFENDANT: Yes.

24 THE COURT: Would you like me to read this document
25 into the record of this case, or do you waive its public

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1 reading?

2 THE WITNESS: Waive.

3 THE COURT: Mr. Barreto, it is my understanding that
4 you wish to plead guilty today to all of the charges that are
5 contained in this second superseding information. Is that
6 correct?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you had a sufficient opportunity to
9 speak with your attorneys about these charges to which you
10 intend to plead guilty and any defenses that you may have to
11 these charges?

12 THE DEFENDANT: Yes.

13 THE COURT: Without giving me the details, have your
14 attorneys explained to you the consequences of entering a plea
15 of guilty to these charges?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you satisfied with your attorneys'
18 representation of you in this matter?

19 THE DEFENDANT: Yes.

20 THE COURT: Sir, what I'd like to do now -- I'm going
21 to put the information down for a moment. I'm going to talk to
22 you about certain rights that you have, and these are rights
23 that you would be waiving if you were to enter a guilty plea in
24 this case. What I appreciate, Mr. Barreto, is that you've been
25 paying very careful attention to what I've been saying. I'll

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1 ask you to continue doing that and to let me know if at any
2 time you need to take a break.

3 Will you do that, sir?

4 THE DEFENDANT: Yeah. I mean yes.

5 THE COURT: OK. Thank you, sir.

6 Mr. Barreto, under the Constitution and laws of the
7 United States, you have the right to enter a plea of not guilty
8 to the charges contained in this information.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If you pleaded not guilty, you would be
12 entitled to a speedy and a public trial on the charges
13 contained in this information.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: At a trial, you would be presumed to be
17 innocent, and the government would be required to prove you
18 guilty by competent evidence beyond a reasonable doubt before
19 you could be found guilty.

20 Do you understand that, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: A jury of 12 people would have to agree
23 unanimously that you were guilty of these offenses. You would
24 not have to prove that you were innocent of these offenses if
25 you were to proceed to trial.

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1 Do you understand that, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: At a trial, and at every stage of your
4 prosecution, you are entitled to the assistance of an attorney.
5 If and to the extent that you could not afford an attorney, an
6 attorney is appointed for you at public expense, free of cost
7 to you, in order to represent you.

8 Do you understand that, sir?

9 THE DEFENDANT: Yes.

10 THE COURT: If there were a trial in this case, the
11 witnesses for the government would have to come into court and
12 testify in your presence. Your attorneys could cross-examine
13 the government's witnesses. They could object to the
14 government's evidence. They could offer evidence on your
15 behalf if you wanted them to do so.

16 Do you understand each of those things, sir?

17 THE DEFENDANT: Yes.

18 THE COURT: If there were a trial, you would have the
19 right to testify if you wanted to do so, and you would have the
20 right not to testify if you wanted not to do so. If you
21 decided not to testify, no one, including the jury, could draw
22 any inference or any suggestion of guilt from your decision not
23 to testify.

24 Do you understand that, sir?

25 THE DEFENDANT: Yes.

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1 THE COURT: Another consequence of entering a guilty
2 plea in this particular manner is that you waive -- or give
3 up -- your right to seek suppression or exclusion of the
4 government's evidence in this case.

5 Are you aware of that, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you had a sufficient opportunity to
8 speak with your attorneys about whether there is any basis to
9 seek suppression or exclusion of part or all of the
10 government's evidence against you?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand, sir, that if you were
13 convicted after a trial, you would have the right to appeal
14 from the jury's verdict?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you also understand that even now as
17 we're having this conversation, you can change your mind and
18 enter a plea of not guilty to the charges contained in this
19 information, this second superseding information.

20 Do you understand that, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. Barreto, if you plead guilty and if I
23 accept your guilty plea, you will give up your right to trial
24 and the other rights that I've been discussing with you other
25 than your right to an attorney. You have the right to an

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1 attorney whether you plead guilty or go to trial. But if you
2 plead guilty and if I accept your guilty plea, there will be no
3 trial. I will enter a judgment of guilty on the counts in the
4 information, and I will sentence you at a later date based on
5 information that I obtain from you here today, information that
6 I obtain from the United States Probation Office in a document
7 that's called a presentence investigation report, and based on
8 information that I attain from you and your attorneys and the
9 attorneys for the government in connection with sentencing.

10 If you plead guilty and if I accept your guilty plea,
11 there will be no appeal on the issue of whether the government
12 could use the evidence that it has against you. There would
13 also be no appeal on the issue of whether you, in fact,
14 committed the offenses charged in the information.

15 Do you understand each of those things, sir?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Barreto, if you plead guilty, there is
18 also a degree to which you will have to give up your right not
19 to incriminate yourself. What I mean by that, sir, is that I
20 will be asking you questions about what you did, and you will
21 have to admit and acknowledge your guilt of the offenses
22 charged in the information. And I'm doing that, sir, so that I
23 can satisfy myself that you're pleading guilty because you're,
24 in fact, guilty of these offenses and not for some other
25 reason.

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1 So do you understand that to a limited -- well, to a
2 degree, you will have to give up your right not to incriminate
3 yourself in order to plead guilty here today?

4 THE DEFENDANT: Yes.

5 THE COURT: Sir, do you understand each of the rights
6 that I've been discussing with you this morning?

7 THE DEFENDANT: Yes.

8 THE COURT: Would you like any additional or
9 clarifying information about any of those rights?

10 THE DEFENDANT: No. No.

11 THE COURT: Is it your wish this morning, sir, to give
12 up those rights and to enter a plea of guilty to the charges
13 contained in the second superseding information?

14 THE DEFENDANT: I --

15 THE COURT: Let me ask the question again. I said
16 that very quickly. Is it your wish today, sir, to give up the
17 rights that we've been discussing and to enter a plea of guilty
18 to the charges contained in the second superseding information?

19 THE DEFENDANT: Yes.

20 THE COURT: Thank you, sir.

21 Let's talk then about that information. Do you have a
22 copy of it in front of you?

23 THE DEFENDANT: Yes.

24 THE COURT: Yes.

25 What I see in this information, sir, is that you're

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1 charged in three counts with the offense known as enticement of
2 a minor, in violation of Sections 2422(b) and 2 of Title 18 of
3 the United States Code. And then in Sections 3, 5, and 6,
4 you're charged with receipt of child pornography, in violation
5 of Sections 2252A(a)(2)(B), (b)(1) and then Section 2, also of
6 Title 18 of the United States Code.

7 Is that what you understand the six charges against
8 you to be, sir?

9 THE DEFENDANT: Yes.

10 THE COURT: In anticipation of this proceeding, the
11 government gave to me and to your attorney a document that
12 says -- has your name, and it lists on two pages the elements
13 of the offense. Your attorney is showing you a copy of that
14 document.

15 Do you see it, sir?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you read this document, sir?

18 MS. WERNER: Your Honor, if I may?

19 THE COURT: You may. Ms. Werner, the question that I
20 have for you is -- this is unusual for me and much appreciated
21 that the government has given me in written form the elements.
22 I'd like to know what the defense would like with respect to
23 this part of the Rule 11 plea colloquy. If you'd like
24 Mr. Bhatia to read them into the record, we can do that. If
25 you tell me that you've reviewed them and that that would be

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1 unnecessary, I'll speak to you and your client about that. But
2 tell me what it is you'd like to do.

3 MS. WERNER: Sure, your Honor. First, I did want to
4 say, and this may be a minor correction to something I
5 represented earlier, Mr. Barreto has not seen this actual
6 document with the list of elements --

7 THE COURT: Thank you.

8 MS. WERNER: -- because it was provided to us after
9 our last meeting yesterday morning at the MDC. However, we
10 have gone over the elements after having discussed them with
11 the government at length. So Mr. Barreto is aware of the
12 contents of this document, although he has not reviewed this
13 document particularly.

14 As to how to proceed, I defer to the Court. We have
15 no problem proceeding based on the representation that we have
16 reviewed the elements at length. We also have no problem with
17 the government reading the elements into the record.

18 THE COURT: Mr. Bhatia, for my own convenience and
19 just for belt and suspenders, I'd ask you, please, to place
20 these elements on the record.

21 MR. BHATIA: I agree, your Honor. I'm happy to do
22 that.

23 THE COURT: I thank you. Please do that.

24 Mr. Barreto, you and I are going to be both paying
25 attention to Mr. Bhatia, the prosecutor. He's going to outline

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1 for both of us what the elements are of the two charges. I
2 know they're charged in six counts, but there are two offenses
3 with which you've been charged. So please give your attention
4 to Mr. Bhatia at this moment.

5 Thank you, sir.

6 MR. BHATIA: Your Honor, Counts One, Two, and Four
7 charge the crime of enticement, in violation of 18 U.S.C. §
8 2422(b) and 2. There are four elements to these counts:

9 First, that the defendant used a facility of
10 interstate commerce;

11 Second, the defendant knowingly persuaded or induced
12 or enticed or coerced the victim to engage in sexual activity;

13 Third, the victim was less than 18 years old at the
14 time of the acts alleged in the indictment -- in this case, the
15 information;

16 Fourth, the sexual activity would violate New York
17 State law.

18 As alleged in each of these counts, Counts One, Two,
19 and Four, the sexual activity violated New York Penal Law
20 Section 130.55, titled sexual abuse in the third degree. The
21 elements of an offense under New York Penal Law Section 130.55
22 are that

23 One, the defendant subjected the victim to sexual
24 contact;

25 Two, without the victim's consent.

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1 Under New York law, a person is deemed incapable of
2 consent when he or she is less than 17 years old.

3 Those are the elements of Counts One, Two, and Four.

4 Counts Three, Five, and Six charge the crime of
5 receipt of child pornography, in violation of 18 U.S.C.
6 Sections 2252A(a)(2)(B), (b)(1), and 2.

7 There are four elements to these crimes:

8 First, that the defendant knowingly received or
9 distributed a visual depiction;

10 Second, that the visual depiction was transported in
11 or affecting interstate or foreign commerce or the visual
12 depiction was produced using materials that had been
13 transported in or affecting interstate or foreign commerce;

14 Third, that the visual depiction was child
15 pornography.

16 "Child pornography" means any visual depiction,
17 including any photograph, film, video, picture, or computer or
18 computer-generated image or picture, whether made or produced
19 by electronic, mechanical, or other means, of sexually explicit
20 conduct where (A) the production of such visual depiction
21 involves the use of a minor engaging in sexually explicit
22 conduct; (B) such visual depiction is a digital image, computer
23 image, or computer-generated image that is, or is
24 indistinguishable from, that of a minor engaging in sexually
25 explicit conduct; or (C) such visual depiction was created,

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1 adapted, or modified to appear that an identifiable minor is
2 engaging in sexually explicit conduct.

3 "Sexually explicit conduct" includes actual or
4 simulated (A) masturbation, or (B) lascivious exhibition of the
5 anus, genitals, or pubic area of any person.

6 The fourth element is that the defendant knew of the
7 sexually explicit nature of the material and that the visual
8 depiction was of an actual minor engaged in that sexually
9 explicit conduct.

10 For all six counts in the information, the government
11 would also be required to prove that venue is properly found in
12 the Southern District of New York by a preponderance of the
13 evidence.

14 THE COURT: I thank you very much.

15 Mr. Barreto, were you able to follow along with the
16 prosecutor as he outlined the elements of the offenses in this
17 case?

18 THE DEFENDANT: Yes.

19 THE COURT: And do I understand as well you have in
20 front of you now a written listing of the elements? Also
21 correct, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you understand that if you were to
24 proceed to trial, that is what the government would have to
25 prove at trial?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: Thank you.

5 Mr. Barreto, I'm going to talk about something a
6 little bit different now. I'm going to talk about the
7 penalties that are associated with each of these offenses, and
8 I'm going to begin by talking about the maximum penalties. And
9 when I use that term, what I mean is the most that the law
10 permits me to impose. I want to be clear, Mr. Barreto, so I
11 want to make sure you're listening to me as I say this. Just
12 because I'm discussing the maximum penalties doesn't mean these
13 are what you're necessarily going to receive. I just need to
14 be sure that you understand that by entering a plea of guilty,
15 you're exposing yourself to the possibility of receiving any
16 combination of punishments up to the statutory maximum terms
17 that I'm about to describe.

18 Do you understand that, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: May I proceed.

21 THE DEFENDANT: Yes.

22 THE COURT: I'm going to begin with restrictions,
23 possible restrictions on your liberty.

24 The maximum possible penalty for each count, of each
25 of Counts One, Two, and Four is life imprisonment, and the

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1 maximum term of imprisonment for Counts Three, Five, and Six is
2 20 years' imprisonment.

3 Do you understand that, sir?

4 (Defendant conferred with counsel)

5 THE DEFENDANT: Yes.

6 THE COURT: I find it strange to add them all up, that
7 the aggregate maximum is life, basically.

8 You understand that, sir; yes?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, any term of imprisonment that I
11 impose could be followed by a term of supervised release.

12 For Counts One, Two, and Four, the maximum term of
13 supervised release is five years. For Counts Three, Five, and
14 Six, the maximum term of supervised release that I may impose
15 is three years.

16 Do you understand that, sir?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, because terms of supervised release
19 run together -- they call that concurrently -- the maximum term
20 of supervised release that I could impose is five years.

21 Do you understand that, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: I'm going to talk to you for a moment
24 about supervised release, because I'd like to be sure that you
25 and I have the same understanding of the term.

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1 When I use the term "supervised release," what I mean
2 is a period of time where you would be subject to supervision
3 by the United States Probation Office. There will be terms and
4 conditions of supervised release that you would have to follow.
5 If you were unable or unwilling to follow those terms and
6 conditions of supervised release, the possibility exists that
7 your term of supervised release could be revoked. You could be
8 sent to prison to serve additional jail time. That would be
9 without a jury trial. If I revoked your term of supervised
10 release and imposed additional jail time, you would not get any
11 credit for any prior term of imprisonment that you had served.
12 You would also not get any credit for that time that you were
13 on supervised release in compliance with its terms.

14 Do you understand all of those things, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: In addition, I want you to understand that
17 there is no parole in the federal system. If you were
18 sentenced to a term of imprisonment, you would not be released
19 early on parole. There is an opportunity to earn credit for
20 good behavior, and I believe with the passage of the FIRST STEP
21 Act there are also some additional ways of getting credit
22 against your sentence. As a general matter, you should expect
23 to serve at least approximately 85 percent of any term of
24 imprisonment imposed.

25 Do you understand that, sir?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you want to take a moment to speak with
3 your attorney about credits against your sentence? Please do
4 and tell me when you are ready.

5 Ms. Werner, may we proceed.

6 MS. WERNER: Yes. Thank you, your Honor.

7 THE COURT: Thank you.

8 Mr. Barreto, have you had a sufficient opportunity to
9 speak with your attorney?

10 THE DEFENDANT: Yes.

11 THE COURT: Thank you.

12 Sir, in addition to restrictions on your liberty, the
13 charges to which you're proposing to plead guilty contain
14 certain financial penalties.

15 The maximum penalty for each of these offenses is
16 \$250,000. I can order restitution to any person or entity that
17 has been injured as a result of your conduct. I can order you
18 to forfeit any proceeds that you may have derived from these
19 offenses or any property that you may have used to commit or to
20 facilitate the commission of these offenses.

21 In addition, I must order a mandatory special
22 assessment of \$100 per count of conviction plus an additional
23 assessment of \$5,000.

24 Mr. Bhatia, is that \$5,000 assessment for each charge?

25 MR. BHATIA: It is for each charge, your Honor.

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1 THE COURT: OK. So there is basically a \$5,100
2 collection of special assessments.

3 MR. BHATIA: That's right.

4 THE COURT: All right. Thank you.

5 So to be clear, Mr. Barreto, for each charge, there is
6 the traditional \$100 mandatory special assessment, and then
7 because of the nature of these offenses, there is for each of
8 them as well an additional assessment of \$5,000.

9 Are you aware, sir, that these financial penalties are
10 the maximum possible financial penalties that I may impose?

11 (Defendant conferred with counsel)

12 MS. WERNER: Thank you, your Honor.

13 THE COURT: Ms. Werner, may we proceed.

14 MS. WERNER: Yes, your Honor.

15 THE COURT: Mr. Barreto, have you had a sufficient
16 opportunity to discuss the financial penalties that are
17 associated with these offenses?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand, sir, that taken
20 together, these restrictions on your liberty that I discussed a
21 few moments ago and the financial penalties that I've just
22 discussed with you are the maximum possible financial penalties
23 that are associated with your offense?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Barreto, have you heard of the term

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1 "mandatory minimum"?

2 THE DEFENDANT: Yes. Yes.

3 THE COURT: When I use that term, what it means is
4 that except in very rare circumstances that I don't believe
5 apply here, I can't go below the mandatory minimum term of
6 imprisonment that has been set forth by Congress.

7 Is that your understanding of the term as well, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand that in this case
10 there is a mandatory minimum term of imprisonment for each
11 count of -- excuse me, for Counts One, Two, and Four of ten
12 years and for Counts Three, Five, and Six of five years?

13 Are you aware of that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Barreto, I'm going to now ask you some
16 different questions, and I want to begin them by saying that
17 not all of these questions apply to all people, but I have to
18 ask them nonetheless. So please don't be surprised if I'm
19 asking you a question and it doesn't apply to you. I just have
20 to ask it.

21 May I proceed, sir.

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Barreto, are you a United States
24 citizen?

25 THE DEFENDANT: Yes.

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1 THE COURT: Were you born here, sir, or were you
2 naturalized?

3 THE DEFENDANT: I was born here.

4 THE COURT: I ask, sir, because some people who appear
5 before me are not U.S. citizens, and a guilty plea can have
6 adverse immigration consequences. Since you are a United
7 States citizen, I'm going to ask you a different set of
8 questions, and that question in particular is this.

9 Do you understand that as a result of this guilty
10 plea, you could lose certain valuable civil rights, including
11 the right to vote, the right to hold public office, the right
12 to serve on a jury, and the right to possess a firearm? And
13 you could lose these rights, to the extent you have them today
14 or to the extent that you might otherwise be able to obtain
15 them in the future.

16 Are you aware of that?

17 THE DEFENDANT: Yes.

18 THE COURT: Well, let me ask a different set of
19 questions, sir. At this time are you serving any other
20 sentences? I suspect the answer is no. Am I correct there's
21 no other, you have no other open criminal cases or resolved
22 criminal cases at this time?

23 THE DEFENDANT: No, no.

24 THE COURT: That's fine. Sometimes people appear
25 before me with multiple cases, and I ask so that they

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1 understand that resolving the case before me doesn't
2 necessarily resolve any case they may have before some other
3 judge.

4 Let me ask you a different set of questions, sir.

5 Do you understand that as a result of your guilty plea
6 in this case, you may be required to register as a sex offender
7 under the Sex Offender Registration and Notification Act?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you also understand that as a result of
10 your guilty plea to these offenses, you may face the
11 possibility of civil commitment under the Adam Walsh Child
12 Protection and Safety Act following the completion of any term
13 of imprisonment? That act permits the attorney general or the
14 director of the Bureau of Prisons to certify that a prisoner
15 approaching the end of his period of incarceration is a
16 sexually dangerous person. If at a hearing before a court the
17 government were to demonstrate by clear and convincing evidence
18 that you were sexually dangerous, as the term is defined in the
19 statute, you might be committed to further custody until a
20 court were to determine that you were no longer sexually
21 dangerous.

22 Are you aware of that, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: Without giving me the specifics of your
25 communications, have your attorneys explained to you the

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1 process of sentencing?

2 THE DEFENDANT: Yes.

3 THE COURT: Why don't we -- let me talk about it a
4 little bit, and then you can talk with Ms. Werner if you want
5 to clear up anything.

6 If I accept your guilty plea in this case, the next
7 phase would be sentencing. The probation office would want to
8 interview you in preparing the presentence investigation
9 report, and then it would issue the report. And then, your
10 attorneys and the attorneys for the government would submit
11 statements to me in connection with sentencing, and there would
12 be a proceeding, and I would hear from you and I'd read the
13 written statements and I'd hear from you orally. And then I
14 would impose sentence by considering certain factors that are
15 set forth in a statute. You might have heard them called
16 3553(a) factors, or sentencing factors. So that's, generally
17 speaking, the process of sentencing.

18 Do you understand that, sir?

19 (Defendant conferred with counsel)

20 THE COURT: I'll have you talk to Ms. Werner, and
21 you'll tell me when you're ready.

22 MS. WERNER: Thank you, your Honor. We're prepared to
23 proceed.

24 THE COURT: Thank you.

25 Mr. Barreto have you had a sufficient opportunity now

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1 to discuss or to refresh your recollection about the process of
2 sentencing in this case?

3 THE DEFENDANT: Yes. Now, yes.

4 THE COURT: Mr. Barreto, one of the things that I must
5 consider at sentencing is a document known as the United States
6 Sentencing Guidelines. Sometimes people call that the
7 sentencing guidelines or the guidelines.

8 Have you heard any of those terms in the past?

9 THE DEFENDANT: Yeah, I heard it. Yes.

10 THE COURT: You've heard it, so if I use the term
11 "guidelines" or "sentencing guidelines," that's what I'm
12 referring to, sir.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Barreto, if anyone has attempted to
16 predict for you what your ultimate sentence will be, their
17 prediction could be incorrect. I will be the judge sentencing
18 you. I need to hear from you today. I need to hear from the
19 probation office in the future, and I need to hear from you,
20 your attorneys and the government at sentencing.

21 Do you understand that today no one can predict with
22 any confidence what your ultimate sentence will be?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you understand that if your
25 ultimate sentence is different from what anyone may have

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1 suggested, if it is different from what you expect or hoped
2 for, if it is different from any range contained in any
3 agreement that you may have with the government, you would
4 still be bound by your guilty plea? You would not be permitted
5 to withdraw your guilty plea based merely on dissatisfaction
6 with your sentence.

7 Are you aware of that, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: It is my understanding, Mr. Barreto, that
10 you are pleading guilty today pursuant to a written plea
11 agreement with the government. Am I correct?

12 THE DEFENDANT: Yes.

13 THE COURT: I've been given a document, and I think
14 you have a copy of it in front of you. It is a letter dated
15 October 25 of 2022, from the United States Attorney's Office
16 for the Southern District of New York to Ms. Werner, Mr. Flood,
17 and Mr. Kelly from the Federal Defenders. It mentions this
18 case and the docket of this case.

19 Do you have -- is that in fact the document you have
20 in front of you, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Is this your written plea agreement with
23 the government?

24 THE DEFENDANT: Yes.

25 THE COURT: The document that I have, sir, is 13 pages

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1 long. Is your last page page 13?

2 THE DEFENDANT: Yes.

3 THE COURT: I'm going to hold up a copy of my
4 document. I'll just ask you, on the version that I have there
5 are four signatures. Do you agree with me? Can you just look
6 up here for a moment, please, sir?

7 Can you see four signatures on the page that I'm
8 holding up?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have a comparable page 13 in front
11 of you, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you have four signatures on the page 13
14 in front of you, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: Is one of those signatures yours?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you sign this document today, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you sign this document in the presence
21 of your attorneys?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you sign this document after reading
24 it, after reading this plea agreement?

25 THE DEFENDANT: Yes.

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1 THE COURT: I didn't mean to confuse you. What I'd
2 like to know is that at some point, at any point before you
3 signed this document, did you read it?

4 THE DEFENDANT: Yes, I read it. Yes.

5 THE COURT: And did you speak about it with your
6 attorneys?

7 THE DEFENDANT: Yes.

8 THE COURT: And so at the time that you signed it, did
9 you understand what this document provided?

10 THE DEFENDANT: Yes.

11 THE COURT: I'm marking my copy of the document as
12 Court Exhibit 2. At the end of this proceeding, I'm going to
13 give this document to the government for safekeeping.

14 There are a few things that I'd like to talk about
15 with you in the document, so I'm going to turn, first, to page
16 2. Could you please turn to page 2 of this document and tell
17 me when you've gotten there, sir.

18 THE DEFENDANT: Uh-huh.

19 THE COURT: Are you there?

20 THE DEFENDANT: Yes, I'm there.

21 THE COURT: Thank you.

22 At the bottom of page 2, there is a paragraph that
23 begins, "the defendant hereby admits." And my understanding is
24 that you are admitting to the forfeiture allegations that are
25 associated with certain counts of the information. Am I

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1 correct, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: So I'm going to ask a very technical
4 question. Do you admit to the forfeiture allegations in this
5 case?

6 THE DEFENDANT: Yes.

7 THE COURT: I'll ask you, please, to turn to page 3
8 and tell me when you've gotten to page 3.

9 THE DEFENDANT: I'm there.

10 THE COURT: Thank you.

11 I understand in the first paragraph of page three, the
12 first full paragraph, that you are agreeing to make restitution
13 in an amount that I will order pursuant to certain statutes,
14 and that you're also agreeing that I may consider certain
15 impact statements, victim impact statements.

16 Are you, in fact, making those agreements, sir?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, on the remainder of page 3, and then
19 it carries over to page 4 and page 5 and page 6 and page 7 and
20 page 8, on to the top of page 9, what I understand is happening
21 between pages 3 and 9 is that you and the government are
22 stipulating -- you're agreeing -- that the United States
23 Sentencing Guidelines apply to your case in a particular way.
24 Is that your understanding as well?

25 THE DEFENDANT: Yes.

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1 THE COURT: Mr. Barreto, these stipulations, these
2 agreements that you have, they bind you and your attorneys.
3 They bind the government. They don't bind me because I'm not a
4 signatory to this agreement. I have an independent obligation
5 to calculate the guidelines. This is not to say, sir, that I'm
6 going to come up with a different guidelines range, but what I
7 want to be sure you understand is that I do have that
8 independent obligation to calculate the guidelines.

9 Do you understand that, sir?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you also understand that if I correctly
12 calculate the guidelines but come up with a different range
13 than the range you and the government have stipulated to, that
14 would not be a basis for you to withdraw your guilty plea?

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: My understanding is that you and the
18 government have stipulated that the relevant -- or that the
19 guidelines sentence here is life imprisonment with a mandatory
20 minimum of 121 months' imprisonment. Is that correct, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Could I ask you, please, to turn to page
23 10 and to tell me, please, when you're at page 10.

24 THE DEFENDANT: I'm in page 10.

25 THE COURT: Thank you.

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1 I'm looking at the third full paragraph on page 10,
2 and it begins with the words "It is agreed." Do you see that
3 paragraph, sir?

4 THE DEFENDANT: Yes.

5 THE COURT: I understand in this paragraph you and the
6 government are each agreeing to waive -- or give up -- certain
7 rights that you have if certain things happen at sentencing.
8 Is that your understanding as well?

9 THE DEFENDANT: Yes.

10 THE COURT: In particular, Mr. Barreto, I understand
11 that you are agreeing to give up your right to appeal or to
12 file a collateral attack under Sections 2255 or 2241 of Title
13 28. So you're giving up your right to appeal or to
14 collaterally challenge pieces of your sentence if certain
15 things happen at sentencing.

16 Again, is that your understanding as well?

17 THE DEFENDANT: Yes.

18 THE COURT: Let me put some specifics here.

19 First, I understand that you are agreeing not to
20 appeal or to collaterally challenge any sentence at or below
21 the stipulated guidelines sentence of life imprisonment. And
22 so if I were to impose a term of life imprisonment or something
23 less than that, you would not appeal or collaterally challenge
24 that piece of your sentence. Is that correct?

25 THE DEFENDANT: Yes.

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1 THE COURT: I understand as well that you're agreeing
2 not to appeal or to collaterally challenge any term of
3 supervised release that is less than or equal to the statutory
4 maximum of five years. And so if I were to impose a term of
5 five years of supervised release or something less than that,
6 you're agreeing not to appeal that piece of your sentence. Is
7 that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: I also understand that you are agreeing
10 not to appeal or bring a collateral challenge to any fine that
11 is less than or equal to \$500,000. Is that correct?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Now, I see here there's a
14 special assessment that's listed as \$700, which I believe is
15 incorrect, because we just did the math a little bit earlier.

16 But Mr. Bhatia, would you please consult with defense
17 counsel and tell me if that is the number I should be
18 allocuting Mr. Barreto on or if there's a different number.

19 MR. BHATIA: Your Honor, I conferred with defense
20 counsel. It should be 600 because that's the special
21 assessment. The other parts of it, the \$5,000 for each count,
22 are an additional assessment. But the special assessment
23 should say less than or equal to 600. So if it's acceptable to
24 your Honor, the parties could make a manual edit to that and
25 initial it on the official copy.

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1 THE COURT: I've made the edit and initialed it on my
2 copy.

3 Mr. Barreto, there is a little bit of confusion. The
4 number on the special assessment figure should be \$600 and not
5 \$700. Your attorney is reviewing that with you now.

6 Do you understand that, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: OK. And so, sir, if I were to impose a
9 mandatory special assessment of \$600, you would not be
10 permitted to appeal or to collaterally challenge that piece of
11 your sentence.

12 Do you understand, sir?

13 THE DEFENDANT: Yeah, yes.

14 THE COURT: OK. Mr. Bhatia, are there additional
15 provisions that you would like me to address? I can address
16 the SORNA provision if you'd like, although I believe I have
17 already done that earlier in this proceeding. It's up to you.
18 Those are the only -- that's the only other thing I think would
19 need to be reviewed.

20 MR. BHATIA: That's right, your Honor. I think to
21 just reiterate that the defendant understands and acknowledges,
22 basically the first sentence of that SORNA passage, that the
23 defendant is acknowledging and understanding.

24 THE COURT: Thank you.

25 Mr. Barreto, on page 11, there is a paragraph -- the

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1 second full paragraph begins with the words "the defendant
2 understands."

3 Do you see that paragraph, sir, on page 11? Your
4 attorney is pointing it out to you now.

5 THE DEFENDANT: Oh, yes.

6 THE COURT: We've talked about this earlier, but I
7 understand that in this paragraph you are acknowledging that
8 under the Sex Offender Registration and Notification Act, you
9 must register and keep the registration current in each of the
10 following jurisdictions: where you reside, where you are
11 employed, and where you are a student.

12 Do you understand that obligation, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: Mr. Barreto, does this document that you
15 and I have been talking about constitute your understanding of
16 the entire agreement that you have with the government?

17 THE DEFENDANT: I don't --

18 THE COURT: Let me ask the question a little bit
19 differently. We've been talking about this plea agreement, and
20 there are certain understandings that are listed in here that
21 you have with the government and that the government has with
22 you. Am I correct?

23 THE DEFENDANT: Yes.

24 THE COURT: OK. Other than what is in this document,
25 has anyone made you any promise or offered you any inducement

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1 in order to get you to sign this agreement or to plead guilty
2 here today?

3 THE DEFENDANT: No. No one has.

4 THE COURT: So other than what's in -- is there any
5 agreement that you have with the government that's not in this
6 document? And that's not a trick question. I just want to
7 make sure there's nothing else out there.

8 THE DEFENDANT: No. This. No.

9 THE COURT: It's all in this --

10 THE DEFENDANT: Yes, yes, yes.

11 THE COURT: That is my understanding as well. Thank
12 you four confirming that.

13 Sir, has anyone forced you or threatened you to sign
14 this agreement or to plead guilty here today?

15 THE DEFENDANT: No, no.

16 THE COURT: Has anyone made you a promise as to what
17 your ultimate sentence will be?

18 THE DEFENDANT: No.

19 THE COURT: Could you please tell me in your own words
20 what it is you did that makes you believe you are guilty of the
21 crimes that are set forth in the second superseding
22 information. And let me begin by asking, sir, do you have
23 notes to help you in speaking with me today?

24 THE DEFENDANT: Yes.

25 THE COURT: That's very common. All I want to be sure

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1 of is that the ideas in those notes are yours. Is that
2 correct? No one's forcing you to say anything, correct, sir?

3 THE DEFENDANT: No one's forcing me.

4 THE COURT: No one's forcing you.

5 I'll ask you to speak with your attorney and then when
6 you're ready, please speak to me. Mr. Barreto, what I'll also
7 ask, just because I've already told you about the acoustics in
8 this courtroom, is that you speak louder and slower than you
9 think you need to. So speak with your attorneys and then come
10 back to me when you're ready.

11 Thank you.

12 MS. WERNER: Your Honor, one question for the Court.
13 I think it might be simplest if the Court inquires count by
14 count, inviting his allocution for each specific count, because
15 otherwise it's a lot to tackle in one go, if the Court wouldn't
16 mind.

17 THE COURT: Well, are you asking -- OK.

18 MS. WERNER: Or perhaps, if the Court would allow it,
19 I could prompt him.

20 THE COURT: Yeah. No. That's fine. I guess my
21 confusion is that there are three counts with the same elements
22 and there are three other counts with different elements, and
23 they are not necessarily in sequence. If you're asking me to
24 inquire of him count by count, I'll do that.

25 MS. WERNER: I think that would be simplest, your

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1 Honor.

2 THE COURT: All right.

3 Mr. Barreto, I'm going to begin with Count One, sir,
4 and Count One suggests -- charges you with committing conduct
5 during a particular period of time. The period of time is
6 between November of 2017 and July of 2019. And during that
7 time, it says that you used a facility of interstate commerce,
8 in particular, electronic communications, perhaps with a phone.
9 Is that correct?

10 First of all, let's start with that. Is that correct?

11 THE DEFENDANT: Yes.

12 THE COURT: And in those communications, did you
13 persuade or induce or entice or coerce a victim to engage in
14 sexual activity?

15 MS. WERNER: Your Honor, I'm sorry to interject.

16 Mr. Barreto does have a statement in his own words
17 that I believe would satisfy the elements. I simply meant if
18 he could just take it count by count, so if he could share his
19 allocution for Count One and then Count Two rather than --

20 THE COURT: Thank you.

21 MS. WERNER: -- sharing it all in one go.

22 THE COURT: That's absolutely fine. Excuse me. I
23 misunderstood your request. Absolutely.

24 So let's then, Mr. Barreto, let's please begin with
25 Count One.

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1 THE DEFENDANT: In 2017 and 2019, in the Bronx, I used
2 a cell phone to message with someone who told me they was
3 younger than 18 years old in order to engage in a sexual
4 activity with him.

5 THE COURT: And sir, at the time that you engaged in
6 this conduct, did you understand that it was wrong and illegal?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. One moment, please.

9 Mr. Bhatia, assuming that the allocutions are at that
10 level of specificity or generality, are there additional
11 questions that you would want me to ask in follow-up, or may we
12 proceed?

13 MR. BHATIA: No, your Honor. That level is fine, and
14 we've prepared a proffer about what the government's evidence
15 would show as to each of these counts too that, just to avoid
16 ambiguity, I'd like to do later on. We can do it either as we
17 go count by count or at the end.

18 THE COURT: At the end, please.

19 MR. BHATIA: That level of generality is fine with us
20 as long as it hits the elements.

21 THE COURT: Thank you.

22 Mr. Barreto, let's please proceed to Count Two, sir.

23 THE DEFENDANT: In 2018 -- 2008 --

24 THE COURT: I'm sorry. In 2008, sir?

25 THE DEFENDANT: 2008.

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1 THE COURT: Thank you. Go ahead.

2 THE DEFENDANT: In the Bronx, I used MySpace to
3 message someone who I was -- who I knew was younger than 18
4 years old in order to engage in a sexual activity with him.

5 THE COURT: And again, sir, at that time did you
6 understand that what you were doing was wrong and illegal?

7 THE DEFENDANT: Yes. Yes.

8 THE COURT: All right. If you could turn now, please,
9 to Count Three, sir.

10 THE DEFENDANT: In 2019, in the Bronx, I used Facebook
11 to chat with someone who told me he was younger than 18 years
12 old. We exchanged sexual messages. He sent me sexual
13 pictures. And I watched him do sexual things on a livestream.

14 THE COURT: And sir, as I've asked before, at the time
15 you were engaged in this conduct, did you understand that it
16 was wrong and illegal?

17 THE DEFENDANT: Yes.

18 THE COURT: Count Four, please, sir.

19 THE DEFENDANT: In 2018 or in 2019, in the Bronx, I
20 used Facebook to message someone who told me he was younger
21 than 18 years old. I asked him to come to my house to engage
22 in sexual activity.

23 THE COURT: And at that time, sir, did you understand
24 that what you were doing was wrong and illegal?

25 THE DEFENDANT: Yes.

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1 THE COURT: Please turn to Count Five.

2 THE DEFENDANT: In 2018 or 2019, in the Bronx, I used
3 Facebook to message someone who told me he was younger than 18
4 years old. I asked him to send me sexual photos of himself,
5 and he did.

6 THE COURT: And at that time, sir, did you understand
7 that this conduct was wrong and illegal?

8 THE DEFENDANT: Yes.

9 THE COURT: And Count Six, please, sir.

10 THE DEFENDANT: In 2018, in the Bronx, I used Facebook
11 to message someone who told me he was younger than 18 years
12 old. I asked him to send me photographics.

13 (Counsel conferred with defendant)

14 THE DEFENDANT: Phonographics, photos of him, and he
15 did. And I'm very, very sorry for my actions.

16 THE COURT: I understand, Mr. Barreto.

17 And with this count as well, did you understand that
18 this conduct at the time you were engaged in it was wrong and
19 illegal?

20 THE DEFENDANT: Yes, definitely.

21 THE COURT: OK.

22 Ms. Werner, do you know of any valid defense that
23 would prevail at trial or any other reason why your client
24 should not be permitted to plead guilty to these offenses?

25 MS. WERNER: No, your Honor.

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1 THE COURT: Mr. Barreto, I'm going to ask you to pay
2 special attention to the prosecutor right now. He's going to
3 outline for both of us a proffer of what the government's
4 evidence would be if this case were to proceed to trial. All
5 right, sir?

6 THE DEFENDANT: OK. I mean yes.

7 THE COURT: Yes. OK.

8 Mr. Bhatia, thank you.

9 MR. BHATIA: Your Honor, as to Count One, at trial,
10 the government's evidence would show that in or about November
11 2017, victim one, who was 13 years old at the time, met with
12 the defendant at a local store. Victim one initially told
13 Barreto that he was 15. Mr. Barreto initially told the victim
14 he was 17, but he later acknowledged that he was 27. Between
15 three weeks and a month after the meeting, Mr. Barreto and the
16 victim began communicating via Facebook Messenger. Records
17 from Facebook show that they communicated frequently from 2017
18 to 2019. In or about July 2019, the victim went to Barreto's
19 apartment. There, Mr. Barreto gave him marijuana and alcohol
20 as well, and later, Mr. Barreto recorded a video of victim one
21 and himself engaged in sexual activity.

22 Count Two, in July 2008, Mr. Barreto reached out to
23 victim two on MySpace. At the time victim two was 14, and
24 Mr. Barreto was 19. After speaking on MySpace, victim two and
25 the friend took a train to visit Mr. Barreto in the Bronx.

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1 When Mr. Barreto and victim two were alone together in a
2 stairwell in that apartment building, they had sexual activity,
3 and they subsequently began a six-weeklong relationship, which
4 included sex and other physical conduct. And they also
5 communicated via text message during that relationship.

6 Count Three -- well, let me go to Count Four, your
7 Honor, which is the last enticement count.

8 As to Count Four, late at night on December 9, 2018,
9 Mr. Barreto reached out to victim four via Facebook Messenger.
10 Victim four asked for Mr. Barreto's age, and Mr. Barreto
11 responded 18, about to be 19. In fact, Mr. Barreto was 30
12 years old. Victim four told Barreto he was 14, adding: I got
13 rules in my house. I'm 14. My parents are strict. If you
14 want something with me you got to understand.

15 In December 2018 --

16 THE COURT: Sir, excuse me. How old was victim four
17 at the time? Was he 14 or something else?

18 MR. BHATIA: I believe victim four at the time was 14.
19 Victim four was under the age of 18.

20 THE COURT: Thank you, sir.

21 Please continue.

22 MR. BHATIA: In December 2018, Mr. Barreto and victim
23 four engaged in several sexual communications. Mr. Barreto and
24 victim four also discussed victim four coming over to Barreto's
25 home. In or about December 2018, victim four traveled to

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1 Barreto's home in the Bronx, New York, where they had oral sex.

2 I'll go back now to Count Three.

3 In August of 2019, Mr. Barreto reached out to victim
4 three via Facebook Messenger. Mr. Barreto said he was 17 or 18
5 when, in fact, he was 31. Victim three said he was 16 when, in
6 fact, he was 15. Barreto and victim three would go on to
7 communicate via Facebook Messenger regularly in August and
8 September 2019. Their communications included several sexual
9 messages and also included video messages. On one or more
10 occasions, victim three showed Barreto his penis during these
11 video sessions, and victim three made these recordings and a
12 photograph in his apartment in the Bronx.

13 As to Count Five, the second count of receipt of child
14 pornography, on November 27, 2018, victim five initiated a
15 Facebook conversation with Barreto. Later that day,
16 Mr. Barreto said he was 19. He was, in fact, 30. Victim five
17 said he was 16. He was, in fact, 14. Over the course of
18 several weeks, victim five and Barreto had various
19 conversations about sexual topics. In or about December 2018,
20 victim five sent a photograph of his penis to Barreto using
21 Facebook Messenger. And in the same month, when those messages
22 were being sent, Mr. Barreto told other people that he was
23 living in the Bronx at the time. In fact, that's the same
24 month when he met with victim four in the Bronx.

25 Count Six, on December 23, 2018, Mr. Barreto initiated

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1 a Facebook conversation with victim six. On December 25, 2018,
2 victim six asked for Barreto's age, and Mr. Barreto responded
3 that he was 17, about to be 18 -- "I really hope that cool."
4 In fact, Mr. Barreto was 30 years old at the time. Barreto and
5 victim six subsequently had several communications about sexual
6 topics. Victim six subsequently sent a picture of his penis to
7 Barreto, and victim six took the photograph in his apartment in
8 the Bronx. And victim six was also under age 18 at the time.

9 THE COURT: I'm understanding, sir, that if we were to
10 proceed to trial in this case, that would be part but not
11 necessarily all of the government's evidence at that trial. Is
12 that correct?

13 MR. BHATIA: That's right, your Honor. That's just a
14 part of the evidence.

15 THE COURT: I thank you for the factual proffer.

16 Mr. Barreto, were you able to hear the prosecutor just
17 now?

18 THE DEFENDANT: Yes.

19 THE COURT: Sir, if this case were to proceed to
20 trial, those are the allegations that the government would hope
21 to prove at trial.

22 Do you understand that, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: Ms. Werner, do you agree that there is a
25 sufficient factual predicate for a guilty plea to Counts One

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1 through Six of the superseding information in this case?

2 MS. WERNER: I do, your Honor.

3 THE COURT: If your client wishes to plead guilty, is
4 there any reason why I should not accept his guilty plea?

5 MS. WERNER: No, your Honor.

6 THE COURT: Mr. Bhatia, do you agree that there is a
7 sufficient factual predicate for a guilty plea to Counts One
8 through Six?

9 MR. BHATIA: Yes, your Honor.

10 THE COURT: If Mr. Barreto wishes to plead guilty, is
11 there any reason why I should not accept his guilty plea?

12 MR. BHATIA: No, your Honor.

13 THE COURT: Mr. Barreto, at this time, do you wish to
14 enter a plea of guilty to Counts One through Six of the second
15 superseding information in this case?

16 THE DEFENDANT: Yes.

17 THE COURT: Sir, because you have acknowledged that
18 you are, in fact, guilty as charged in each of these counts;
19 because I'm satisfied that you know of your rights, including
20 your right to go to trial; and because I'm satisfied that you
21 are aware of the elements of these offenses and the
22 consequences of your guilty plea, including the penalties that
23 may be imposed, I find that you are knowingly and voluntarily
24 pleading guilty. I will accept your plea of guilty to Counts
25 One through Six of the second superseding information.

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1 We spoke earlier, Mr. Barreto, about sentencing in
2 this case, and as I mentioned to you, the probation office will
3 want to interview you in connection with the presentence
4 investigation report. I am ordering, sir, that that interview
5 not take place unless you are accompanied, either virtually or
6 in person, by one of your attorneys or someone from the Federal
7 Defenders.

8 Do you understand that, sir?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Barreto, please understand that I rely
11 very heavily on the presentence investigation report in
12 determining what is an appropriate sentence. That report is
13 most useful to me when it is complete and when it is accurate,
14 and therefore, I'm asking you that if you choose to speak to
15 the probation office, that what you say to them be accurate and
16 complete.

17 Do you want to pause, sir?

18 THE DEFENDANT: I'm -- I'm OK.

19 THE COURT: Sir, please also understand that you have
20 a right to review the presentence investigation report before I
21 see it. I invite you to do that in case there is anything that
22 requires correction or objection.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Barreto, I'm going to set sentencing

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1 down for February 2 of 2023, at 3 p.m., to give the probation
2 office enough time to prepare its materials.

3 Is that a date and time that works for the government?

4 MR. BHATIA: Yes, your Honor.

5 THE COURT: Is that a date and time that works for the
6 defense?

7 MS. WERNER: Your Honor, I apologize for not bringing
8 this to the Court's attention earlier, but I wonder if the
9 Court might entertain a slightly longer than usual period
10 before we proceed to sentencing in this case due to the
11 mitigation work that we are doing with Mr. Barreto.

12 THE COURT: I would except that, assuming that the
13 government has no objection to it, which I suspect the
14 government does not.

15 Mr. Bhatia.

16 MR. BHATIA: No, your Honor.

17 THE COURT: OK.

18 What is a longer period? Is there a month in
19 particular that you're thinking about, Ms. Werner?

20 MS. WERNER: Your Honor, I'm asking for a date about
21 six months out.

22 THE COURT: All right.

23 MS. WERNER: Around April, the end of April would be
24 fine.

25 THE COURT: Ms. Noriega, I'm confident that there's an

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1 April date that we can find.

2 THE DEPUTY CLERK: April 27 at 3 p.m.

3 THE COURT: Ms. Werner, given that, my hope is that
4 the parties will not be seeking much in the way of extensions.

5 MS. WERNER: Yes, your Honor. That was my hope, to
6 avoid many letters asking for more time.

7 THE COURT: OK. Thank you.

8 I would ask for the defense sentencing submission two
9 weeks in advance of sentencing, the government's responsive
10 submission one week in advance of sentencing.

11 Mr. Bhatia, please submit to the probation office in
12 the next week or so a factual statement.

13 Ms. Werner, please reach out in the next two weeks or
14 so to begin the interviewing process with the probation office.

15 Let me just check the rest of my notes. Excuse me.

16 Mr. Bhatia, is there anything else that you would like
17 to address with me in this proceeding?

18 MR. BHATIA: Your Honor, I apologize for not raising
19 this earlier, but I wanted to make sure that the defendant had
20 discussed the possibility of immigration consequences in his
21 guilty plea.

22 THE COURT: He is a U.S. citizen, and he was born
23 here, so we spoke about that, and given his representations to
24 me, I did speak to him about the civil consequences of a guilty
25 plea, but I don't believe there are immigration consequences.

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1 MR. BHATIA: I must have just missed it. I apologize.
2 Other than that, nothing else right now.

3 THE COURT: OK. Thank you.

4 Ms. Werner, just so that I am clear, if you would like
5 additional allocution regarding your client's citizenship or
6 immigration issues, I'm happy to provide it, but in the absence
7 of that, is it your -- we were planning, we being my chambers,
8 were planning on having the presentence investigation report
9 prepared in the ordinary course. Are you asking for that to be
10 on a longer schedule to accommodate the mitigation evidence
11 that you're thinking about?

12 MS. WERNER: I think that would be helpful in this
13 case, your Honor.

14 THE COURT: All right. I am still going to ask my
15 deputy to order the report, and I'd ask you to work with the
16 probation office so that they understand that it will be on an
17 extended schedule. To the extent that we are able to
18 communicate that to them, we will do so, but please explain why
19 it is to them that you'd like it on a longer schedule.

20 MS. WERNER: Thank you, your Honor.

21 THE COURT: Mr. Kelly, yes.

22 MR. KELLY: May I have a moment to confer with Ms.
23 Werner?

24 THE COURT: Of course, yes.

25 MS. WERNER: Your Honor, Mr. Kelly is making the good

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1 point that we have on occasion encountered probation officers
2 who feel that there must be an explicit order from the Court
3 excusing them from the standard schedule.

4 THE COURT: We are advising the probation office that
5 we are ordering it so that it is not forgotten but that it is
6 on an extended schedule because of anticipated mitigation
7 evidence.

8 MS. WERNER: Thank you, your Honor.

9 THE COURT: Between the two of us, hopefully that will
10 work. If not, the probation office knows how to reach me.

11 Mr. Bhatia, I understand from you there is nothing
12 further, and I thank you for that.

13 Ms. Werner and Mr. Kelly, would you please consult
14 with your client and let me know if there's anything else you'd
15 like me to address in this proceeding.

16 (Counsel conferred with defendant)

17 MS. WERNER: Thank you, your Honor. Nothing else for
18 today.

19 THE COURT: OK. One moment, please. Thank you.

20 I will be handing back a copy of the plea agreement to
21 the government. There is also a medical attention form that
22 we'll be giving to the marshals.

23 With that, we are adjourned. Thank you all very much.

24 (Adjourned)
25